ORIGINAL

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

FILED

08 MAR -3 PM 4:40

United States District Court	District Southern District of California	
Name Jesus Lopez	Prisoner No. F-84281	Case No. 01 CR 3170-001 BTM
Place of Confinement Deuel Vocational Institution ("D.V.I")		

BY: DEPUTY

'08 CV 0398 JM BLM

Name of Petitioner (include name under which convicted) v. Name of Respondent (authorized person having custody of petitioner) S.R. Moore, Warden of D.V.I.

~~The Attorney General of the State of:~~ N/A

PETITION

1. Name and location of court which entered the judgment of conviction under attack This constitutes an attack on a conviction which hasn't occurred yet. It's "Pending."

2. Date of judgment of conviction Pending

3. Length of sentence pending

4. Nature of offense involved (all counts)

5. What was your plea? (Check one)
   (a) Not guilty ☐
   (b) Guilty ☐
   (c) Nolo contendere ☐
   N/A

   If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
   No plea entered yet.

6. If you pleaded not guilty, what kind of trial did you have? (Check one)
   (a) Jury ☐
   (b) Judge only ☐
   N/A

7. Did you testify at the trial? N/A
   Yes ☐ No ☐

8. Did you appeal from the judgment of conviction? N/A
   Yes ☐ No ☐

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9. If you did appeal, answer the following:

(a) Name of court N/A

(b) Result

(c) Date of result and citation, if known

(d) Grounds raised

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court N/A

(2) Result

(3) Date of result and citation, if known N/A

(4) Grounds raised

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court N/A

(2) Result

(3) Date of result and citation, if known N/A

(4) Grounds raised

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐ motions under P.C. §1381

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court

(2) Nature of proceeding

(3) Grounds raised

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N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result N/A

(6) Date of result

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Name of proceeding

(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result N/A

(6) Date of result

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☐ No ☒

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:
There is no other Court, other than this one which has jurisdiction over this matter.

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
(b) Conviction obtained by use of coerced confession.
(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
(e) Conviction obtained by a violation of the privilege against self-incrimination.
(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
(g) Conviction obtained by a violation of the protection against double jeopardy.
(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
(i) Denial of effective assistance of counsel.
(j) Denial of right of appeal.

A. Ground one: Petitioner has a Constitutional Right to a Speedy Trial. That right is being obstructed.

Supporting FACTS (state *briefly* without citing cases or law): Petitioner has been convicted in a Court of this State for the commission of a different crime and he has entered upon a term of imprisonment in a State Prison for a period exceeding 90 days. There is pending in this Court another indictment, information, complaint, or other criminal proceeding wherein he remains to be sentenced. (continues on page 8)

B. Ground two: N/A

Supporting FACTS (state *briefly* without citing cases or law):

N/A

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C. Ground three: NA

Supporting FACTS (state *briefly* without citing cases or law):

NA

D. Ground four: NA

Supporting FACTS (state *briefly* without citing cases or law):

NA

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them:

NA

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☐ No ☑

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
(a) At preliminary hearing NA

(b) At arraignment and plea

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(c) At trial NA

(d) At sentencing NA

(e) On appeal NA

(f) In any post-conviction proceeding NA

(g) On appeal from any adverse ruling in a post-conviction proceeding NA

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☐ No ☑

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☑

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) Give date and length of the above sentence: NA

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

2-22-08

Date

Jesus Lopez

Signature of Petitioner

Paragragh 12: (continued)

regarding "Ground 1," and "Supporting Facts."

WHEREFORE, petitioner hereby moves for and Demands to be brought to trial on these pending charges pursuant to California Penal Code §1381 and to the Federal Speedy Trial Act, 18 U.S.C. §3161.

Both the State and Federal Constitutions guarantee a criminal defendantthe right to a speedy trial trial. (United States Constitution, Sixth Amendment; California Constitution, Article I, §15, Cluase 1) In order to establish writ review a defendant must establish that absent such relief he will be prejudiced by such delay. See: People v. Denise Martinez, 22 Cal. 4th 750, 755 (2000).

The issue of prejudice in the context of a defendant's speedy trial was considered in People v. Salvador Martinez, 37 Cal. App. 4th 1598, 1594 (1995). There, it was held that a defendant who has lost the opportunity to serve his current, or "controlling" sentence concurrently with the sentence which is, or was, pending has easily demonstrated prejudiced and it is presumed that such delay has violated his right to a speedy trial. SEE ALSO:Barker v. Municipal Court, 64 Cal. 2d 806 (1996)(where the United States Supreme Court stated that the mere "possibility" that a defendant's application or demand for speedy trial petition might have allowed him to receive a sentence even partially concurrent with the one being served constitutes prejudice.

As the the question of "EXHAUSTION;" There is no other forum, whether administrative or lower Court which has jurisdiction to even consider this motion and "Demand for Trial." Basically, "exhaustion must first be had here, and then if an appeal is needed, this cause must be transferred to another Court for appellate review.

Those are the Grounds and Facts of this case.

JESUS LOPEZ
F842-81 Z78
P.O. BOX 600
TRACY CA 95378

Office of the Clerk
UNITED STATES DISTRIC COURT
SOUTHERN DISTRIC of california

Dear Clerk,

Enclosed you will please find to be conventionally filed an original and [redacted] Four (4) copies of:

" Writ of Habeas Corpus "

Additionally, I request that the extra) copy which is included with an envelope and postage fully pre-paid thereon be conformed and returned to me for my personal records.

Cordially yours

[redacted]
Jesus Lopez

PROOF OF SERVICE BY MAIL
C.C.P. 1013a

I declare that I am a resident of or employed in the County of San Joaquin, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Z-dorm, Bed 28 at D.V.I., Tracy California.

I am readily familiar with the ordinary practice of the business of collecting, processing and depositing correspondence in the United States Postal Service and that the correspondence will be deposited the same day with postage thereon fully prepaid.

On ____________, I served the Petition for Writ of Habeas Corpus.

on the parties listed below by placing a true copy thereof enclosed in a sealed envelope for collection and mailing in the United States Postal Service following ordinary business practices at D.V.I., Tracy, California addressed as follows:

S.R. Moore
[name of DVI Warden]
P.O. Box 600
Tracy, CA 95378 - 0600

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 2-25-08, at Tracy, California.

Lopez Jesus
(Type or print name)

Jesus Lopez
(Signature)

JS44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Jesus Lopez

DEFENDANTS

SR Moore

FILED
08 MAR -3 PM 4:41
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: [signature] DEPUTY

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Joaquin
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Jesus Lopez
PO Box 600
Tracy, CA 95378
F-84281

ATTORNEYS (IF KNOWN)

'08 CV 0398 JM BLM

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT (For Diversity Cases Only)

	PT	DEF		PT	DEF
Citizen of This State	☐1	☐1	Incorporated or Principal Place of Business in This State	☐4	☐4
Citizen of Another State	☐2	☐2	Incorporated and Principal Place of Business in Another State	☐5	☐5
Citizen or Subject of a Foreign Country	☐3	☐3	Foreign Nation	☐6	☐6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
☐ 110 Insurance
☐ Marine
☐ Miller Act
☐ Negotiable Instrument
☐ 150 Recovery of Overpayment &Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153Recovery of Overpayment of Veterans Benefits
☐ 160 Stockholders Suits
☐ Other Contract
☐ 195 Contract Product Liability

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Eiectmant
☐ 240 Tort to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

PERSONAL INJURY
☐ 362 Personal Injury-Medical Malpractice
☐ 365 Personal Injury - Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

CIVIL RIGHTS
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/Accommodations
☐ 444 Welfare
☐ 440 Other Civil Rights

PRISONER PETITIONS
☐ 510 Motions to Vacate Sentence Habeas Corpus
☒ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights

FORFEITURE/PENALTY
☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC881
☐ 630 Liquor Laws
☐ 640 RR & Truck
☐ 650 Airline Regs
☐ 660 Occupational Safety/Health
☐ 690 Other

LABOR
☐ 710Fair Labor Standards Act
720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc.
☐ Security Act

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (13958)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
☐ 400 State Reappointment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 810 Selective Service
☐ 850 Securities/Commodities Exchange
☐ 875 Customer Challenge 12 USC
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State
☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appelate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 **DEMAND $** Check YES only if demanded in complaint: **JURY DEMAND:** ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE March 3, 2008 ~~SIGNATURE OF ATTORNEY OF RECORD~~ [signature]

148300 $5.00 3/3/08 [initials]

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 148300 - SH

March 03, 2008
16:34:46

Habeas Corpus
USAO #.: 08CV0398
Judge..: JEFFREY T MILLER
Amount.: $5.00 MO
Check#.: 13898349

Total-> $5.00

FROM: JESUS LOPEZ